

(2) In any fiscal year, the PAE may not request HUD to approve Restructuring Plans with exception rents for more than 20 percent of all units covered by the PRA, except that HUD may approve a waiver of this 20 percent limitation based on the PAE's narrative explanation of special need.

(b) *How are exception rents calculated?*

(1) Exception rents must be set at a level sufficient to support the costs of operating the project. The PAE must take into account the following cost items:

(i) Debt service on the second mortgage under § 401.461(a) or a rehabilitation loan included in the Restructuring Plan;

(ii) The operating expenses of the project, as determined by the PAE, including:

(A) Contributions to adequate reserves for replacement;

(B) The costs of maintenance and necessary rehabilitation;

(C) Other eligible costs permitted under the section 8 program;

(iii) An adequate allowance for potential operating losses due to vacancies and failure to collect rents, as determined by the PAE;

(iv) A return to the owner to the extent permitted by § 401.461(b)(3)(ii)(A); and

(v) Other expenses determined by the PAE to be necessary for the operation of the project.

(2) The exception rent must not exceed 120 percent of the Fair Market Rent for the market area, except that HUD may approve an exception rent greater than 120 percent of Fair Market Rent, based on a narrative explanation of special need submitted by the PAE, subject to the 5 percent limitation in section 514(g)(2)(A) of MAHRA.

§ 401.412 Adjustment of rents based on operating cost adjustment factor (OCAF) or budget.

(a) *OCAF.* (1) The Restructuring Plan must provide for annual adjustment of the restructured rents for project-based assistance by an OCAF determined by HUD.

(2) *Application of OCAF.* HUD will apply the OCAF to the previous year's contract rent less the portion of that rent paid for debt service. This para-

graph applies to renewals of contracts in subsequent years which receive restructured rents under either section 514(g)(1) or (2) of MAHRA.

(b) *Budget-based.* Rents will be adjusted on a budget basis instead of OCAF only upon owner request, subject to HUD approval.

§ 401.420 When must the Restructuring Plan require project-based assistance?

The Restructuring Plan must provide for the section 8 contract to be renewed as project-based assistance, subject to the availability of funds for this purpose, if:

(a) The PAE determines there is a market-wide vacancy rate of 6 percent or less;

(b) At least 50 percent of the units in the project are occupied by elderly families, disabled families, or elderly and disabled families; or

(c) The project is held by a nonprofit cooperative ownership housing corporation or nonprofit cooperative housing trust.

§ 401.421 Rental Assistance Assessment Plan.

(a) *Plan required.* For any project not subject to mandatory project-based assistance under § 401.420, the PAE must develop a Rental Assistance Assessment Plan in accordance with section 515(c)(2) of MAHRA to determine whether assistance should be renewed as project-based assistance or whether some or all of the assisted units should be converted to tenant-based assistance.

(b) *Matters to be assessed.* The PAE must include an assessment of the impact of converting to tenant-based assistance and the impact of extending project-based assistance on:

(1) The ability of the tenants to find adequate, available, decent, comparable, and affordable housing in the local market;

(2) The types of tenants residing in the project (such as elderly families, disabled families, large families, and cooperative homeowners);

(3) The local housing needs identified in the applicable Consolidated Plan developed under part 91 of this title;

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(4) The cost of providing assistance, comparing the applicable payment standard to the rent levels permitted by §§ 401.410 and 401.411;

(5) The long-term financial stability of the project;

(6) The ability of residents to make reasonable choices about their individual living situations;

(7) The quality of the neighborhood in which the tenants would reside; and

(8) The project's ability to compete in the marketplace.

(c) *Conversion may be phased in.* Any conversion from project-based assistance to tenant-based assistance may occur over a period of not more than 5 years if the PAE decides the transition period is needed for the financial viability of the project.

(d) *Reports to HUD.* The PAE must report to HUD on the matters specified in section 515(c)(2)(C) of MAHRA at least semi-annually.

§ 401.450 Owner evaluation of physical condition.

(a) *Initial evaluation.* The owner must evaluate the physical condition of the project and provide the following information to the PAE in a form acceptable to the PAE:

(1) All work items required to bring the project to the standard in § 401.452, including any work items needed to ensure compliance with applicable requirements of part 8 of this title concerning accessibility to persons with disabilities;

(2) The capital repair or replacement items that will be necessary to maintain the long-term physical integrity of the property;

(3) A plan for funding the rehabilitation work included in paragraph (a)(1) of this section, which work must be completed in a timely manner after closing the restructuring transaction, that identifies the source of the required owner contribution of non-project funds; and

(4) An estimate of the initial deposit, if any, and the estimated monthly deposit to the reserve for replacement account for the next 20 years.

(b) *Use of CA.* An owner may comply with paragraph (a) of this section by submitting a comprehensive needs assessment in accordance with Title IV

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of the Housing and Community Development Act of 1992 (12 U.S.C. 1715z–1a note) if the CA:

(1) Was completed or updated within 1 year; and

(2) Contains all of the matters required by paragraph (a) of this section.

(c) *Reconsideration and modification of evaluation.* If the PAE, after its independent review under § 401.451, determines that the owner's evaluation either fails to address specific necessary work items or fails to propose a cost-effective approach to rehabilitation, the owner may modify its evaluation to satisfy the concerns of the PAE.

§ 401.451 PAE Physical Condition Analysis (PCA).

(a) *Review and certification of owner evaluation.* (1) The PAE must independently evaluate the physical condition of the project by means of a PCA. If the PAE finds any immediate threats to health and safety, the owner must complete those work items immediately, or the PAE must evaluate the project's eligibility in accordance with § 401.403(b)(2)(iii).

(2) After consultation with the owner and an opportunity for the owner to modify its evaluation performed under § 401.450, the PAE must either certify to the accuracy and completeness of the owner's evaluation performed under § 401.450 for each project covered by the PRA, or state that the evaluation fails to address certain items or does not propose a cost effective approach.

(b) *Rejection due to inaccurate or incomplete owner evaluation.* If the PAE cannot certify to the accuracy and completeness of the owner's evaluation due to its failure to address specific work items or because it does not propose a cost effective approach, the PAE must notify HUD. If HUD agrees with the PAE's determination, the PAE must notify the owner that the request for a Restructuring Plan is rejected.

(c) *Rejection due to poor condition of the project.* Based on the completed PCA, the PAE must determine whether proceeding with a Restructuring Plan with necessary rehabilitation is more cost-effective in terms of Federal resources than rejecting the Request for a Restructuring Plan under § 401.403(b)(2)(iii) and providing tenant-